IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 483 OF 2006.

M/s Satari Builders & anr. ..Appellants.
vs.
Meghraj K. Sarnot & ors. ..Respondents.

Shri Rafiq Dada, Senior Advocate with Prasad S. Danifor the appellants.

Shri S.S. Kuklkarni for respondent No.8.

Shri V.A. Thorat, Senior Advocate with S.N. Chandrachud for respondent Nos. 77 to 94.

WITH

APPEAL FROM ORDER NO. 484 OF 2006.

M/s Safari Builders &anr. ..Appellants.
vs.
Smt.SarvatibaiD. Bibwe & ors. ..Respondents.

Shri Rafiq Dada, Senior Advocate with Prasad Dani for the appelant.

Shri V.A. Thorat, Senior Advocate with S.S. Kulkarni for respondent No.47.

CORAM: A.M. KHANWILKAR,J.

DATED: 21st July 2006.

P.C.:

. Heard Counsel for the parties on the preliminary objection taken at the instance of the respondents Nos. 77 to 94. The preliminary objection is with regard to the maintainability of the Appeals from Order against the impugned order passed by the lower Court.

2. It is not necessary to advert to the factual matrix of the case. It is sufficient to

observe that the suit filed by respondent No.95 was allowed to be withdrawn. Appellants are not party to that suit. Appellants however, moved an application purporting to review application before the trial Court. During the pendency of that application, the appellants have taken out interim application for temporary injunction. The said application has been described as the one under Order 39 Rule 1 of the Code of Civil Procedure. The order which is impugned in these appeals is passed on the later application. The question is whether the impugned order as passed, is be referable to an order passed on the application under O. 39 R.1 of the C.P.C. Provisions of O.39 R.1 abundantly make it clear that interim application under that provision can be filed when suit is pending before the trial Court. Any other application after disposal of the suit cannot be ascribed to provisions of O.39 R.1, the application, though, described as having been filed under that provision. Viewed thus, it is amply clear that later application on which impugned order has been passed by the lower Court is referable to the application moved before that Court in terms of section 151 of the C.P.C. If order is one passed in exercise of power under section 151 of the C.P.C., then it is well settled that the same is not an appealable order within the meaning of Order 43 of the C.P.C.

Accordingly, I am upholding preliminary objection taken by respondent Nos. 77 to 94 that the appeals are not maintainable.

3. At this stage, Counsel for the appellants prays that the appellants be permitted to convert this appeal into appropriate petition under Article 227 of the Constitution of India. Ordinarily, it would have been possible to accede to the said request. However, petition under Article 227 will be entirely different. Therefore, Appeals are dismissed with liberty to the appellants to take recourse to any other remedy as may be permissible in law, which will be decided in accordance with law.

(A.M. KHANWILKAR,J.)